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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re J.L., a Person Coming Under the  
Juvenile Court Law.

ORANGE COUNTY SOCIAL SERVICES  
AGENCY,

Plaintiff and Respondent,

v.

J.L.,

Defendant and Appellant.

G050357

(Super. Ct. No. DP023997)

O P I N I O N

Appeal from an order of the Superior Court of Orange County, Deborah C. Servino, Judge. Affirmed.

Marissa Coffey, under appointment by the Court of Appeal, for Defendant and Appellant.

Nicholas S. Chrisos, County Counsel, Karen L. Christensen and Aurelio Torre, Deputy County Counsel, for Plaintiff and Respondent.

J.L. (Mother) appeals from the order terminating her parental rights to her son, J.L. She contends the juvenile court should have applied the parental benefit and sibling relationship exceptions to adoption as the permanent plan. (Welf. & Inst. Code, § 366.26, subd. (c)(1)(B)(i), (v).) <sup>1</sup> We find no error, and we affirm the order.

## FACTS AND PROCEDURE

### *Prior Opinion*

In our prior opinion, *J.L. v. Superior Court* (Jan. 31, 2014, G049202 [nonpub. opn.] (*J.L.*)), we affirmed the juvenile court's October 2013 order made at the dispositional hearing bypassing reunification services for Mother and scheduling a permanency planning hearing for one-year-old J.L. pursuant to section 366.26 (hereafter the section 366.26 hearing). Our prior opinion fully states the relevant facts through the dispositional hearing. We adopt and incorporate by reference the facts and analysis from our prior opinion and only summarize them here.

Mother had an extensive alcohol and substance abuse history dating back to at least 1995, and she had numerous arrests and convictions relating to drug use, assault, battery, and domestic violence. Her five older children (J.L.'s half-siblings) were placed in the custody of their father, A.L., by the family court, and he had a three-year domestic violence restraining order against Mother. J.L. was born in July 2012, and his father's whereabouts are unknown. J.L. was detained on July 15, 2013, after Mother left him home alone while she went out drinking and using illegal substances. (*J.L., supra*, typed opn. at pp. 2-3.)

A.L. and the maternal grandmother, who also had a restraining order against Mother, reported on the details of Mother's alcoholism and drug use, which frequently led to her violent behavior, and Mother's history of not caring for J.L., or her older children. J.L. was initially placed with the maternal grandmother but moved to the

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<sup>1</sup> All further statutory references are to the Welfare and Institutions Code.

foster home on July 17, 2013, where he has remained throughout these proceedings and has done very well. (*J.L., supra*, typed opn. at pp. 4-5, 7.)

Mother began having monitored visits with J.L., in July 2013, but she twice brought an unidentified man with her to the visits, once brought two of her older children, and once brought the maternal grandmother, despite the social worker's express directions that no one could attend visits without the social worker's permission. (*J.L., supra*, typed opn. at pp. 5-6.)

In August 2013, Mother missed numerous drug tests, failed to keep in contact with the social worker, and was not participating in drug programs or her perinatal program. At the end of August 2013, Mother showed up drunk at the maternal grandmother's home where J.L.'s half-siblings were residing. She had a confrontation with the maternal grandmother and absconded with two of the girls. Mother was arrested and incarcerated. (*J.L., supra*, typed opn. at p. 6.)

At the jurisdictional hearing on September 16, 2013, Mother submitted on the social worker's reports. The juvenile court found the allegations of the petition to be true by a preponderance of the evidence and found J.L. to be a dependent child under section 300, subdivision (b) [failure to protect]. At the dispositional hearing on October 21, 2013, the juvenile court removed custody of J.L. from Mother. It took judicial notice of the 2010 family court order requiring Mother to attend a parenting program with a substance abuse component and provide proof of completion of that program to the family court, which she failed to do. The juvenile court found reunification services should be bypassed under section 361.5, subdivision (b)(13), which applies when a parent has an extensive history of substance abuse and has resisted prior court ordered treatment, and it scheduled a section 366.26 hearing for February 18, 2014. (*J.L., supra*, typed opn. at pp. 7-8.) Mother filed a petition for writ of mandate and on January 31, 2014, we issued our opinion denying the petition and affirming the referral order. (*J.L., supra*, typed opn. at p. 12.)

### *Section 366.26 Hearing Reports*

In its first report for the section 366.26 hearing, the Orange County Social Services Agency (SSA) explained that at the beginning of this case in July 2013, Mother was granted six hours of monitored visitation per week. Up until Mother's incarceration in August 2013, she was consistent with her visits but on several occasions brought unauthorized persons (unidentified man, the maternal grandmother, J.L.'s older half-siblings). Mother was generally loving with J.L. during the visits, but sometimes she was unfocused, and spent her time texting, and often brought J.L. unhealthy food for snacks. Mother had no visits with J.L. during her month-long incarceration and visits resumed at the end of September 2013.

A mid-October visitation summary described Mother's visitation as "sporadic" (primarily due to her incarceration, but she had also cancelled one October visit) and noted J.L. had visits with the maternal grandmother and his half-siblings during this time. The January 27, 2014, visitation summary again reported Mother was sporadic in visitation, and continued to bring unhealthy food for J.L. and text on her phone during visits. Between November 2013 and January 2014, Mother had 21 visits that took place without incident; she either cancelled or did not show up for 10 visits, and was late for others. J.L.'s foster mother, who supervised the visits, reported Mother did not like to follow directions and balked at corrections even as to her basic parenting skills. The maternal grandmother and J.L.'s older half-siblings had visits with J.L. once per month.

SSA reported J.L.'s foster mother and her adult daughter who also lived in the foster home, were hoping to co-adopt J.L. The foster mother was also the legal guardian of four other children who had previously been dependents of the juvenile court. The foster mother and her adult daughter were fully committed to adopting J.L., and J.L. had "a significant bond with the [foster mother] and her family."

The section 366.26 hearing was continued to April 2014. SSA's addendum report gave additional details on contacts between J.L. and his half-siblings (four of whom continued to reside with the maternal grandmother), with whom he continued to have monthly visits. Those visits typically went well and the foster mother observed the half-siblings loved J.L. The foster mother said she had a good relationship with the maternal grandmother, who had told the foster mother she favored J.L. remaining in his placement. The foster mother stated if she adopted J.L. she would most likely allow continued contact between J.L. and his half-siblings but did not currently favor ongoing contact with Mother. In February 2014, Mother told the social worker she had left the sober living home. Between February and March 2014, Mother missed three visits with J.L., either failing to confirm the visit, cancelling, or not showing up. She showed up at a mid-March visit with a black eye, claiming she had been robbed and hit on the head. Also in mid-March Mother told the social worker she was going to a transitional living center and did not know how long she would be on "lockdown."

The addendum report also described J.L.'s contacts and relationship with his five older half-siblings. Although J.L. had never lived with his half-siblings, four of them opposed adoption. One indicated she feared an adoptive parent would not allow continued contact with J.L. Three believed J.L. should be with his "real family." The youngest half-sibling did not fully understand the meaning of adoption. The social worker explained that due to J.L.'s youth and limited contact with his half-siblings, he had not shared significant common experiences with them, and the strength of their bond was most likely limited. Although there was a high likelihood J.L. would continue to have contact with his half-siblings, "[t]he argument that the lack of ongoing contact with his [half-]siblings would be detrimental to [J.L.] just doesn't apply in this case."

#### *The Section 366.26 Hearing Testimony*

The court granted the half-siblings' request to participate in the section 366.26 hearing. The oldest of J.L.'s half-siblings, 15-year-old M.L., testified.

M.L. testified that before J.L. was removed from Mother, when all the half-siblings were still living with their father, A.L., Mother and J.L. would come over to the residence “like every day.” J.L. spent the night at A.L.’s house approximately three times a week, and sometimes the half-siblings spent the night at Mother’s house, and J.L. would be happy. M.L. and one of her sisters would help care for J.L. J.L. shared many holidays and birthdays with the half-siblings.

M.L. last saw J.L. for 15 minutes at a carnival along with her other siblings. He was smiling, happy, recognized his half-siblings, and gave them hugs and kisses. M.L. said J.L. was affectionate and loving towards his half-siblings on other visits as well. M.L. believed she, and the other half-siblings, had a bond with J.L. because they spent time together before he was placed in foster care, and continued to be affectionate during visits.

Mother testified she “tr[ie]d not to” miss any visits and had missed fewer than five. She did not remember cancelling any visits in October, November, or December 2013. Mother testified she brought food to J.L. at visits and stopped bringing junk food when told. During visits she changed J.L.’s diapers, comforted him, and taught him his colors and “ABCs.” They played and danced. J.L. would kiss and hug her and call her “mom” or “momma” or “ma.” J.L. never cried during visits. Mother testified she and J.L. had a parent-child bond and she could teach him right from wrong as he grew up.

Mother testified J.L. and his half-siblings shared a bond given how the children taught J.L. and interacted with him. J.L. saw his older half-siblings at their father’s home about five to six times per week prior to his removal. Mother testified J.L.’s half-siblings accepted J.L. as part of their family, and J.L. enjoyed his interactions with them as well. Mother conceded J.L. seemed happy and well-fed when she saw him at visits. She said he was a happy, loving child who was fun to play with and who got

along with people. All parties stipulated that except for M.L., J.L.’s half-siblings had monthly visits with him for approximately one-and-a-half to two hours per visit.

### *Ruling*

The court found J.L. was likely to be adopted, and none of the exceptions to adoption as the preferred permanent applied. As to the parental benefit exception (§ 366.26, subd. (c)(1)(B)(i)), the court found Mother failed to establish she maintained regular visitation and contact with J.L. and failed to show the benefit of maintaining her relationship with J.L. outweighed the benefits of adoption. As to the sibling benefit exception (§ 366.26, subd. (c)(1)(B)(v)), the court observed J.L. was not raised in the same home as the half-siblings and did not share “significant common experiences that would generate a close and strong bond” with them. The court ordered adoption as J.L.’s permanent plan and terminated Mother’s parental rights.

## DISCUSSION

### *1. Parental Benefit Exception*

Mother contends the juvenile court erred by not applying the parental benefit exception to termination of parental rights. We find no error.

At a section 366.26 hearing, the juvenile court determines a permanent plan of care for a dependent child, which may include: (1) adoption (necessitating the termination of parental rights); (2) guardianship; or (3) long-term foster care. (§ 366.26, subd. (c)(1), (c)(4)(A).) “If the dependent child is adoptable, there is strong preference for adoption over alternative permanency plans.” (*In re S.B.* (2008) 164 Cal.App.4th 289, 297.)

To avoid termination of parental rights and adoption, a parent has the burden of showing one or more of the statutory exceptions to termination of parental rights set forth in section 366.26, subdivision (c)(1)(A) or (B) apply. (*In re Scott B.* (2010) 188 Cal.App.4th 452, 469.) The exceptions permit the court, “in *exceptional*

*circumstances*,” “to choose an option other than the norm, which remains adoption.”  
(*In re Celine R.* (2003) 31 Cal.4th 45, 53 (*Celine R.*).

The so-called parental benefit exception applies when there is “a compelling reason for determining that termination [of parental rights] would be detrimental to the child due to . . . the following circumstances: [¶] The parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.” (§ 366.26, subd. (c)(1)(B)(i).) “The ‘benefit’ necessary to trigger this exception has been judicially construed to mean, ‘the relationship promotes the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents. In other words, the court balances the strength and quality of the natural parent/child relationship in a tenuous placement against the security and the sense of belonging a new family would confer. If severing the natural parent/child relationship would deprive the child of a substantial, positive emotional attachment such that the child would be greatly harmed, the preference for adoption is overcome and the natural parent’s rights are not terminated.’ [Citations.]” (*In re J.C.* (2014) 226 Cal.App.4th 503, 528-529 (*J.C.*); see also *In re Autumn H.* (1994) 27 Cal.App.4th 567, 575.)

“A parent asserting the parental benefit exception has the burden of establishing that exception by a preponderance of the evidence. [Citation.] It is not enough to show that the parent and child have a friendly and loving relationship. [Citation.] “Interaction between [a] natural parent and child will always confer some incidental benefit to the child . . . .” [Citation.] For the exception to apply, ‘a parental relationship is necessary[.]’ [Citation.] “While friendships are important, a child needs at least one parent. Where a biological parent . . . is incapable of functioning in that role, the child should be given every opportunity to bond with an individual who will assume the role of a parent.” [Citation.]’ [Citation.]” (*J.C.*, *supra*, 226 Cal.App.4th at p. 529.)



We apply the substantial evidence standard of review to the factual issue of the existence of a beneficial parental relationship, and the abuse of discretion standard to the determination of whether there is a compelling reason for finding that termination would be detrimental to the child. (*J.C.*, *supra*, 226 Cal.App.4th at pp. 530-531; *In re K.P.* (2012) 203 Cal.App.4th 614, 621-622; *In re Bailey J.* (2010) 189 Cal.App.4th 1308, 1314-1315 (*Bailey J.*).) The latter determination “calls for the juvenile court to determine the *importance* of the relationship in terms of the detrimental impact that its severance can be expected to have on the child and to weigh that against the benefit to the child of adoption. . . .” (*J.C.*, *supra*, 226 Cal.App.4th at p. 531.)

The court found Mother failed to establish either prong—visitation and benefit—of the parental benefit exception. The regular visitation and contact element of the beneficial relationship exception “is somewhat self-explanatory.” (Seiser & Kumli, *Cal. Juvenile Courts Practice and Procedure* (2014) *Permanency Planning Procedures*, § 2.171[5][b][i][A], p. 2-542.) It does not require the parent to have “‘maintained day-to-day contact’” (*In re C.B.* (2010) 190 Cal.App.4th 102, 124), but it does require the parent to have “‘maintained *regular* visitation and contact” (§ 366.26, subd. (c)(1)(B)(i), *italics added*).

Substantial evidence supports the court’s finding Mother’s visitation was not regular and consistent. She missed a full month of visits before the dispositional hearing due to her incarceration. In mid-October, her visits were described as “sporadic.” Between November 2013 and January 2014, she either cancelled or did not show up for at least 10 visits. And she either failed to confirm, canceled, or did not show up for three visits with Joseph between February and March 2014.

Substantial evidence also supports the court’s finding the benefit of adoption outweighed maintaining the parent-child relationship. (§ 366.26, subd. (c)(1)(B)(i).) While conceding she was not ready to have J.L. returned to her care, Mother nonetheless contends her relationship with J.L. was such that her parental rights

should be maintained. She argues J.L. lived with her for the first year of his life, and she was always appropriately concerned about his overall well-being and health after his detention. Mother participated in services, attended visits with J.L., and went to some of his doctors' appointments. At their monitored visits, Mother brought food, diapers, and clothes to J.L. They were affectionate with each other—J.L. kissed her and called her “mom,” “momma,” or “ma.” They played and enjoyed being with each other.

But even if the evidence showed some bond between Mother and J.L., and that he derived some benefit from their relationship, we cannot say the court abused its discretion in concluding it did not outweigh the benefits of adoption. “[A] successful parental benefit exception claim rests not on whether the parent/child contacts “confer some incidental benefit to the child . . . .” [Citation.]” (*J.C., supra*, 226 Cal.App.4th at p. 532.) Mother at best established she had pleasant contacts with a two-year-old child who had been out of her care since he was one year old. Mother never progressed beyond monitored visits. And although visits were pleasant, there is no evidence J.L. had any difficulty separating from Mother at their conclusion. He was thriving in his foster home and strongly bonded with the foster mother and her family.

*In re Jerome D.* (2000) 84 Cal.App.4th 1200 (*Jerome D.*), and *In re Amber M.* (2002) 103 Cal.App.4th 681 (*Amber M.*), illustrate the compelling evidence necessary to establish the parental benefit exception. In *Jerome D., supra*, 84 Cal.App.4th at page 1206, the child “seemed lonely, sad, and . . . ‘the odd child out’” in his placement. He wanted to live with his mother and had enjoyed unsupervised night visits in her home. (*Id.* at pp. 1206-1207.) A psychologist opined the child and his mother “shared a ‘strong and well[-]developed’ parent-child relationship and a ‘close attachment’ approaching a primary bond.” (*Id.* at p. 1207.) The court concluded keeping parental rights intact would prevent the child’s “position as the odd child out in [placement] from becoming entrenched by a cessation of visits and the loss of his mother while [his half-siblings] continued to enjoy visits and remained [the mother’s] children.” (*Id.* at p. 1208.)

In *Amber M.*, *supra*, 103 Cal.App.4th at page 690, the court reversed termination of parental rights where a psychologist, therapists, and the court-appointed special advocate uniformly concluded “a beneficial parental relationship . . . clearly outweigh[ed] the benefit of adoption.” Additionally, two older children had a “strong primary bond” with their mother, and the younger child was “very strongly attached to her.” (*Ibid.*) If the adoptions had proceeded, the children would have been adopted in separate groups. (*Id.* at pp. 690-691.)

Here, Mother did not demonstrate harm would have ensued from termination of parental rights similar to that demonstrated in *Amber M.* or *Jerome D.* At the permanency stage, the bond the child shares with the parent and the harm that might arise from terminating parental rights must be balanced against what is to be gained in a permanent stable home, and “it is only in an *extraordinary* case that preservation of the parent’s rights will prevail over the Legislature’s preference for adoptive placement.” (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1350, italics added.) The parental benefit exception will apply only where the parent has demonstrated the benefits to the child of continuing the parental relationship outweigh the benefits of permanence through adoption. Mother did not make that showing here. Accordingly, the court did not err by ruling the parental benefit exception did not apply.

## 2. Sibling Relationship Exception

Mother also contends the court erred by not applying the sibling relationship exception to preserve J.L.’s relationship with his five half-siblings. We disagree.

Under section 366.26, subdivision (c)(1)(B)(v), the court may find an exception to termination of parental rights when “[t]here would be substantial interference with a child’s sibling relationship, taking into consideration the nature and extent of the relationship, including, but not limited to, whether the child was raised with a sibling in the same home, whether the child shared significant common experiences or

has existing close and strong bonds with a sibling, and whether ongoing contact is in the child's best interest, including the child's long-term emotional interest, as compared to the benefit of legal permanence through adoption.” (*In re L.Y.L.* (2002) 101 Cal.App.4th 942, 947-948 (*L.Y.L.*)). “If the court determines terminating parental rights would substantially interfere with the sibling relationship, the court is then directed to weigh the child's best interest in continuing that sibling relationship against the benefit the child would receive by the permanency of adoption. [Citation.]” (*Id.* at p. 952.)

“[T]he sibling relationship exception contains strong language creating a heavy burden for the party opposing adoption.” (*Celine R.*, *supra*, 31 Cal.4th at p. 61.) “[T]he application of this exception will be rare, particularly when the proceedings concern young children whose needs for a competent, caring and stable parent are paramount.” (*In re Valerie A.* (2007) 152 Cal.App.4th 987, 1014.)

Mother bore the burden of establishing the exception. (*Bailey J.*, *supra*, 189 Cal.App.4th at p. 1314.) We review the court's finding on whether adoption substantially interferes with sibling relationships for substantial evidence. (*Ibid.*) Thus, we “draw all reasonable inferences in support of the findings [and] consider the record most favorably to the juvenile court's order,” without “evaluat[ing] the credibility of witnesses, reweigh[ing] the evidence, or resolv[ing] evidentiary conflicts.” (*L.Y.L.*, *supra*, 101 Cal.App.4th at p. 947.) We review the court's “quintessentially” discretionary” balancing of the benefits of adoption against the interference with sibling relationships for an abuse of discretion. (*Bailey J.*, *supra*, 189 Cal.App.4th at p. 1314.)

Substantial evidence supports the court's finding adoption would not substantially interfere with J.L.'s sibling relationships. Preliminarily, there is no evidence the relationships would be severed—the foster mother has stated she favors ongoing contact between J.L. and his half-siblings. (See *In re Megan S.* (2002) 104 Cal.App.4th 247, 254 (*Megan S.*) [child's placement in adoptive home that permits sibling contact was consideration in deciding if there was substantial interference with

sibling relationships].) Moreover, even were there to be no future contact, we cannot say the court erred. J.L. never lived in the same home with his half-siblings. Although they had frequent contacts until he was detained at age one, thereafter they had only monthly visits. While visits were pleasant and J.L. was affectionate, there was no evidence he shared common experiences with his half-siblings or that they had a close and strong bond. Although the older half-siblings opposed J.L.'s adoption, "the ultimate question is whether adoption would be detrimental to the adoptive child, not someone else." (*Celine R.*, *supra*, 31 Cal.4th at p. 55.) There is no evidence J.L. would suffer detriment were the relationships to be severed. (*Megan S.*, *supra*, 104 Cal.App.4th at p. 251.)

#### DISPOSITION

The order of the juvenile court terminating parental rights is affirmed.

O'LEARY, P. J.

WE CONCUR:

RYLAARSDAM, J.

THOMPSON, J.